**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.5291 of 2007

**20.4.2007**

Between:

Mamidi Rathaiah, S/o.Subbaiah
And others

… Petitioners

AND

The District Collector, Prakasam District
And others

… Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.5291 of 2007

ORDER:

The petitioners are allegedly landless poor persons. In 1976, Government of Andhra Pradesh assigned agricultural land admeasuring Acs.1.00 each in survey Nos.431/8, 431/13 and 431/15 to 431/17 situated at Yendluru village of Santhanoothalapadu Mandal in Prakasam District. The assignment was either in their favour or in favour of their predecessors. Petitioners converted these lands into fishponds by obtaining loans from Scheduled Caste (SC) Corporation. They incurred loss. Therefore, they again reverted to agriculture in the lands. So as to discharge the liability to SC Corporation, they sold the lands to third parties. However, petitioners allege that they leased out the lands from their purchasers and raised eucalyptus plantation in the last week of January 2007. The Mandal Revenue Officer, Santhanoothalapadu Mandal (MRO) – third respondent herein; along with his staff came to the land and directed petitioners to vacate the land. On 01.3.2007, MRO with the help of police pluck out the eucalyptus plants in the entire extent of lands without due process of law and in violation of provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). The petitioners seek the following reliefs. (1) a writ of Mandamus declaring the action of respondents in plucking out eucalyptus plants raised by the petitioners in the land in survey Nos.431/8, 431/13 and 431/15 to 431/17 without following the procedure contemplated under the Act as illegal and arbitrary; (2) to direct the respondents not to evict the petitioners from the lands; (3) to direct the respondents to resume the land to the petitioners; and (4) to direct the respondents to pay damages for the land and for mental agony suffered by the petitioners due to plucking out of eucalyptus plants.

When the matter was heard on 15.3.2007, learned Assistant

Government Pleader for Revenue (Assignment), after obtaining instructions, submitted that assignment made in favour of petitioners was cancelled and the land was resumed. He sought time to file counter affidavit. Accordingly counter affidavit is filed by the MRO (redesignated as Tahsildar) on behalf of the respondents, on 04.4.2007, to which a reply affidavit is already filed by the petitioners on 09.4.2007. Therefore, the matter was heard finally on 17.4.2007, 19.4.2007 and on 20.4.2007 and is being disposed of by this order.

The counter affidavit of third respondent contains the following allegations. The then Tahsildar, Ongole, granted assignment through DK pattas in survey No.431 admeasuring Acs.10.50, by proceedings dated 29.6.1976 to the petitioners or their predecessors. The land as such was not assigned to some of the petitioners. Petitioners did not cultivate the land on the pretext that the land is saline and is not fit for cultivation. They availed loans from Prakasam District SC Cooperative Society and cultivated fishponds in the lands for a period of five years. As they incurred losses, they discontinued fishponds but thereafter did not take up agricultural activity. The entire land is now covered with japan bushes, which was cleared by the persons, who purchased land from the petitioners, for establishment of an industrial unit. The purchasers also laid an approach road from Ongole-Kurnool State Highway to have access to their industrial unit. Petitioners did not raise any eucalyptus plantation. The Additional Revenue Inspector (ARI) submitted a report about the violations of conditions of DK patta. Therefore, notices were issued vide Rc.A/7/2007, dated 10.1.2007 calling upon the assignees/legal heirs of the original assignees to submit explanation. They refused to receive notices from ARI. Therefore, the same was served in substituted manner by affixing the notice to a wooden pole near the land. As no reply was received within fifteen days, orders were passed on 27.1.2007 resuming the land for violation of conditions of patta and also on the ground that they have alienated the land under registered sale deeds. Though the petitioners have right of appeal under para 12(iii) read with para 15 of Board Standing Orders (BSO) to Revenue Divisional Officer (RDO) within thirty days from the date of the order of the MRO, they have not availed the same and, therefore, the writ petition cannot be entertained. While making an averment that under the provisions of the Act, as amended in 2007, resumed land can be utilized for public purpose or can be assigned to other landless poor persons, it is stated that after resuming the land, the land has been utilized for providing house sites to 248 persons belonging to weaker section of the village and certain extent of land has been reserved for Government purpose.

All other allegations made by the petitioners with regard to alleged permission obtained by the petitioners for converting the land into fishponds, for selling the land to third parties and restarting agricultural operations etc., are denied.

Petitioners filed a lengthy reply affidavit. While reiterating many of the allegations made in the writ affidavit, petitioners point out that the notice was not served to the petitioners properly and legally, that the petitioners came to know about the resumption orders dated 27.1.2007 only after the respondents filed counter affidavit in this Court and that third respondent has no power to cancel the assignment.

Learned Counsel for petitioners made elaborate submissions, which are only repetitions of various contentions contained in the writ affidavit as well as reply affidavit. He placed reliance on the decision of this Court in **Akkana Sivudu Naidu v Tahsildar, Bobbili, Srikakulam District**[1] in support of the submission that the improper service of notice or order vitiates the exercise of power. He also placed reliance on an unreported judgment of this Court in **P.Venkat Rao v The District Collector**[2] to contend that an uncommunicated order of the executive is no order at all.

In the counter affidavit filed on behalf of the respondents, the particulars of assignment on 26.6.1976 are given as follows.

| Assignee Number | Name of the Assignee | Sy.No. | Extent |
|---|---|---|---|
| 1. | D o l a Kotilingsm, S/o.China Chenchaiah | 431/1 | Acs.1.00 |
| 2. | Dola Venkateswarlu, S/o.Peda Chenchaiah | 431/2 | Acs.1.00 |
| 3. | Mamidi Rattaiah, S/o.Subbaiah | 431/3 | Acs.1.00 |
| 4. | Jamallamudi Kotaiah, S/o.Ankaiah | 431/4 | Acs.1.00 |
| 5. | Balikara Adaiah, S/o.Pitchaiah | 431/5 | Acs.1.00 |
| 6. | Pydi Peda Kotaiah, S/o.Chinna Yallamanda | 431/6 | Acs.1.00 |
| 7. | Balikara Yallamanda, S/o.Pitchaiah | 431/7 | Acs.1.00 |
| 8. | Koppolu China Kotaiah, S/o.Dibbaiah | 431/8 | Acs.1.00 |
| 9. | Ijjagiri Ragamma, W/o.Papaiah | 431/9 | Acs.1.00 |
| 10. | Koppole Kotaiah, S/o.Dibbaiah | 431/10 | Acs.1.00 |
| 11. | Atluri China Yallamanda, S/o.Adenna | 431/11 | Acs.0.50 |

Petitioner No.1 is original assignee and all others are legal heirs

of original assignees. Petitioner No.2 is brother of Ragamma, assignee No.9, in the above table. Petitioners 3 and 4 are sons of assignee No.5. Petitioners 5 and 6 are legal heirs of assignee No.8. Petitioner No.9 is son of assignee No.1. Against petitioners 7 and 8, who are legal heirs of assignee No.10, MRO did not initiate any action. Though land was resumed from assignee Nos.2, 4 and 7, they are not parties to the writ petition. These details would show that the writ petition is filed in a great haste without properly verifying the assignment particulars. As pointed out, even though no action was taken in respect of the land in possession of petitioners 7 and 8, they also joined as parties in the writ petition.

The main defence, in opposing the writ petition, is that ARI sent a report dated 02.1.2007 stating that the assignees did not cultivate the land and kept it fallow and that though the assigned land is only heritable, assignees sold the land to third parties under registered sale deeds. Therefore, on 10.1.2007 MRO issued a show cause notice calling upon the assignees to explain as to why assignment should not be cancelled for the reasons mentioned therein. When these notices were sought to be served by the ARI, the assignees/legal representatives of the original assignees refused to receive the same. Therefore, notices were affixed to a wooden pole near the land on 11.1.2007. After receiving the report from the ARI to that effect on 11.1.2007, MRO waited till 27.1.2007 (fifteen days from the date of notice) and passed orders on 27.1.2007 cancelling the assignment for contravention of conditions of DK patta. Whether the notices were served properly and whether orders were passed by the MRO after considering the relevant facts and whether the petitioners did not violate the terms and conditions of DK patta, are the questions posed by the learned Counsel for petitioners before this Court for consideration.

As rightly pointed out by the learned Assistant Government Pleader, petitioners in the writ affidavit admit that initially they converted the lands into fishponds, that after incurring loss so as to discharge the liability to the SC Corporation, they sold away the lands to third parties and that after obtaining the same lands under lease from the purchasers, petitioners again raised eucalyptus plants. In justification of converting into fish ponds and selling the land to third parties, petitioners allege that fishponds were dug as per the advice of SC Corporation and subsequently the land was sold after obtaining necessary clearance from the MRO. These allegations are denied and the petitioners have not placed any material before this Court to that effect. Even otherwise, SC Corporation or MRO have no power or jurisdiction to grant clearance or to advise the assignees to alienate

the land in contravention of the conditions of the assignment. Therefore, *prima facie*, this Court is convinced that initiation of action by the MRO does not warrant any interference at this stage. As rightly pointed out by the learned Assistant Government Pleader, petitioners can always raise the questions before this Court by filing appeal before the RDO. Even in **Akkana Sivudu Naidu** (supra) relied on by the learned Counsel for petitioners, this Court gave direction to appellate authority to accept the delay and dispose of the appeal. Having regard to the facts of this case, a similar direction can be issued in this case as well.

In the result, without expressing any opinion on the merits of the case, petitioners are given liberty to prefer appeal before the RDO, Ongole, within a period of two weeks from the date of receipt a copy of this order. As and when such appeal is filed, appellate authority may dispose of the same within a period of four weeks thereafter, after considering the point whether petitioners as assignees are entitled for resumption of the land if the same is still vacant. The submission of learned Counsel for petitioners that the land has already been resumed and assigned as house sites to landless poor persons is recorded.

The writ petition, with the above observations, is accordingly dismissed without costs.

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(**V.V.S.RAO, J**)

April 20, 2007.
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[1] 1977 ALT 542

[2] W.P.No.850 of 2007 dated 02.3.2007